as if such person had not been a minor or person of unsound mind."

In my view the said section 15(2) should be read together with the said section 10(1) and as the said beneficiary's guardian had entered into the agreement with the other beneficiaries and assented to the scheme of distribution it would not be necessary for the collector to have himself assented on behalf of the said beneficiary. Such an assent would only be required if no guardian had been appointed for the said beneficiary.

I therefore dismissed the action with costs.

Against the above judgment the plaintiff appealed to the Federal Court.

Suffian F.J. (delivering the judgment of the court): We dismissed this appeal and now give our reasons

Mamat bin Dat San, the deceased, died in 1927 owning a half undivided share in Lot 119 in the Mukim of Rantau Panjang in the District of Pasir Mas, Kelantan.

He left two sons, Bulat bin Mamat and Che Omar bin Mamat.

Bulat died in 1943, leaving four children: Mek Som (the plaintiff and appellant before us), Bidah, Aminah and Awang.

Che Omar died in 1945, leaving a widow and some children including Samat.

Nothing was done to distribute Mamat bin Dat San's estate until 14th January, 1957, when the matter came up before the collector, the estate being a small estate. As it happened, no order was made then, and the matter was re-heard on 11th February, 1957, when the collector ordered among other things that a stranger Awang bin Senik, described in the collector's notes as a purchaser, should get a third share in the land.

Thereafter, in due course the plaintiff, that is the deceased's granddaughter, became the administratrix of her grandfather's estate and of her brother Awang's, he having died on 10th July, 1951. In that capacity she in 1966 sued Awang bin Senik, the so-called purchaser, and asked the High Court to declare that the collector's order in the defendant's favour was null and void. It will be observed that she could, under section 29 of the Small Estates (Distribution) Ordinance 1955, have appealed against the collector's order to the High Court, but did not do so, and instead chose to bring this suit.

The trial did not pursue a smooth course, and there were amendments to the statement of claim, changes of counsel and several adjournments. Finally Mr. Chan appeared for her at the trial. It is clear from the notes made by the learned judge that at that trial there was only one issue, namely, a question of law raised by the amended paragraph 11 of the statement of claim. That paragraph alleges —

"The Collector of Pasir Mas acted *ultra vires* when he ordered on 18th May, 1957 that the ½ undivided share in the said land be distributed among Awang bin Senik, Samat bin Che Omar and Mek Som binti Bulat equally, when Awang bin Senik was not a beneficiary of the estate of Mamat bin Dat San."

Mr. Wrigglesworth for the plaintiff put forward many arguments before us, but we were of the opinion that it was not open for him to depart from the pleadings and raise other issues. These issues should have been raised in the High Court, and if they had been raised then, the defendant might have called evidence to meet these issues. For instance, Mr. Wrigglesworth wanted to submit that the collector's order was void because one of the beneficiaries, Awang bin Bulat, did not consent to it as he had by the time of the hearing before the collector died and no personal representative had been appointed for his estate. It is true that this point had been raised by the plaintiff's statement of claim, and the assistant collector called for the plaintiff said in evidence that the record of the hearing did not show that Awang bin Bulat was present then. But when Mr. Chan closed his case in the High Court he announced that there was only one issue, namely, the one raised by paragraph 11 of the amended statement of claim, whereupon counsel for the defendant decided not to call any evidence in rebuttal, and no wonder there was no finding by the learned judge on this point.

The learned judge decided in favour of the defendant simply on the record of the collector from which he came to the conclusion that all the parties concerned had consented to the order made by the collector. With respect we agreed with him, and accordingly dismissed this appeal.

Appeal dismissed.

Solicitors: *Wrigglesworth & Co.; Isahak Hamid & Co.*

MOHAMED BIN MUSA v. DEPUTY PUBLIC PROSECUTOR (No. 2)

[F.C. (Suffian, Ali and Ong Hock Sim FJJ) October 19, 1971]

[Kuala Lumpur — Federal Court Criminal Appeal No. 15 of 1971]

Criminal Law and Procedure — Appeal — Jurisdiction of Federal Court — Courts of Judicature Act, 1964, ss. 50, 64, 65 and 66.

The appellant appealed against the order of Ibrahim J. (reported at p. 49, *ante*) who had dismissed an application by the appellant to be permitted to see and inspect the exhibit before the trial.

Held, striking out the appeal: as the appellant had not been convicted and as the matter was not brought to the Federal Court under any of the provisions of sections 64, 65 or 66 of the Courts of Judicature Act, 1964, the Federal Court had no jurisdiction to hear and determine the appeal.

FEDERAL COURT.

C. Jegathesan for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Suffian F.J.: We struck out this appeal because we had no jurisdiction to entertain it.

Our appellate criminal jurisdiction is governed by the Courts of Judicature Act, 1964. Section 50(1)

says that the Federal Court has jurisdiction only to hear an appeal by a person convicted by the High Court in the exercise of its original criminal jurisdiction. We could not hear this appeal because the appellant here had not been convicted. In fact what happened was this: he was about to be tried in the sessions court in Kota Bharu on a charge of possession of a pistol contrary to section 3(1) of the Arms Act, 1960. The charge said that the pistol was a pen-type pistol. The accused's counsel asked to see it before the trial, but the prosecution refused to let him do so. The accused then applied by motion to the High Court for an order that he be permitted to see and inspect it before the trial. Ibrahim J. rejected the application. The accused appealed to us.

Subsection (4) of section 50 says that the Federal Court also has jurisdiction to hear and determine matters brought before it in accordance with the provisions of sections 64, 65 or 66 of the Act. Well, this matter had not been brought before us under any of those sections.

When pressed during the course of the arguments, Mr. Jegathesan agreed that we had no jurisdiction.

Appeal struck out.

Solicitor: *Jega & Co.*

HOOI WING CHEONG & ANOR. v. LOGANAYAKI

[F.C. (Azmi, L.P., Suffian and Ali F.JJ.) October 19, 1971]

[Malacca — Federal Court Civil Appeal No. 16 of 1971]

Contract — Application for rescission — Specific Relief (Malay States) Ordinance, 1950, s. 34.

The plaintiff had applied for rescission of three agreements made between her and the two defendants. These three agreements were identical in all respects and each was concerned with the purchase by the plaintiff of a piece of land and a house which was being built at the time of the agreement. She alleged that there was a collateral oral contract that the payment of the balance of the purchase price would be arranged by a loan from a bank. The learned trial judge rejected the alleged oral contract, but went on to hold that the deposit of $9,000 should be returned to the plaintiff, as the defendants had agreed to extend the time for payment. On appeal,

Held, allowing the appeal: the learned trial judge should have dismissed the plaintiff's claim on the ground that the plaintiff had not proved the alleged collateral oral agreement, and should not have dealt with the question of repayment of the deposit.

FEDERAL COURT.

W. H. Sault (*Thara Singh Sidhu* with him) for the appellants/defendants.

Atma Singh Gill for the respondent/plaintiff.

Cur. Adv. Vult.

Azmi L.P.: This is an appeal by the defendants against the judgment of the High Court at Seremban.

The plaintiff brought this suit for the recission of three agreements made between her and the two defendants. These three agreements were identical in all respects and each is concerned with the purchase by the plaintiff of a piece of land and a house which was being built at the time of the agreement. Each lot and house cost $27,000. On signing the agreement she paid $3,000 under each agreement. She promised to pay the balance of the purchase price of $24,000 in the following manner: —

(a) On or before 11th January 1965	$5,000
(b) On or before 28th January 1965	$5,000
(c) Upon the completion of the house	$3,000

The balance of the purchase price of $11,000 is to be paid within three weeks from the date of the receipt of a notice from the defendants that the issue document of title of the land has been obtained from the appropriate authorities.

But the plaintiff in her statement of claim further alleged in paragraph (3) of it as follows: —

"At the time of and in consideration of the plaintiff's entering into the agreements for sale, the plaintiff informed the defendants that the balance of the agreed instalments in respect of the balance of the purchase price will be paid in one lump sum at the time of transfer by obtaining a loan from a bank. Wherefore the defendants orally agreed with the plaintiff, as an agreement collateral to the said agreement for sale and to the intent that the plaintiff should rely thereon that the balance of the instalments were to be paid in one lump sum by a loan to be raised on a charge from a bank by the plaintiff in conjunction with the transfer. The defendants well knew that the plaintiff did not have so much money to meet the instalments, when same fell due."

She went on to say that contrary to that oral agreement, the defendants by their letter to her dated 13th January 1965 demanded from her payment of the next instalment of $5,000 within three days from the date of the letter and failing which they said they would forfeit the first instalment. Her statement of claim goes on further to say that on 17th March 1965 she explained again the whole transaction and indicated that she was ready and willing to perform her obligation in accordance with the collateral oral agreement made between her and the defendants. When the defendants failed to reply to this letter the plaintiff by letter dated 23rd April 1965 rescinded the said agreements and demanded repayment of the first instalment of $9,000 paid under the three said agreements. The defendants denied the existence of any such collateral agreement. Though admitting the receipt of the letter of 17th March 1965, they contended that by that time they had already exercised the rights in treating the contract at an end and deposit forfeited by virtue of the terms and conditions of the three said agreements. They denied that the plaintiff was entitled to claim for the refund of the deposits. At the trial, the plaintiff confessed in her evidence that she herself knew nothing about this alleged oral agreement and explained that though she signed the agreements the whole matter was handled by her husband and on her behalf.

Her husband P.W.2 gave evidence in support of plaintiff's claim and as to the existence of the collateral oral agreement. The learned judge, however, rejected the alleged collateral oral agreement in these words: —

"Taking into consideration the evidence on this issue it is, to my mind, improbable in the circumstances of the case that the alleged oral agreement as contended by P.W. 2 ever took place at all. Not only the plaintiff knew nothing about